

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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DISPATCH

In the Matter of

Telecommunications Relay Services  
And Speech-to-Speech Services for  
Individuals with Hearing and Speech  
Disabilities

CG Docket No. 03-123

**ORDER****Adopted: July 27, 2005****Released: July 28, 2005**

By the Acting Chief, Consumer &amp; Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this *Order*, we find that the offering of free or discount long distance service to telecommunications relay services (TRS) consumers as an incentive for a consumer to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls,<sup>1</sup> constitutes an impermissible financial incentive in violation of Section 225 of the Communications Act.

**II. BACKGROUND**

2. On January 26, 2005, the Consumer & Governmental Affairs Bureau (CGB), under delegated authority, issued the *Financial Incentives Declaratory Ruling* concluding that any program that offers any kind of financial incentive or reward for a consumer to place a TRS call, including minimum usage arrangements or programs (whether or not tied to the acceptance of equipment), violates Section 225 of the Communications Act.<sup>2</sup> The Bureau explained that "in view of the intent and nature of Section 225, and the obligation placed on entities providing voice telephone services to also offer TRS as an accommodation to persons who, because of a disability, cannot meaningfully use the voice telephone system, we interpret Section 225 and the implementing regulations to prohibit a TRS provider's use of any kind of financial incentives or rewards, including arrangements tying the receipt of equipment to minimum TRS usage, directed at a consumer's use of their TRS service."<sup>3</sup> The Bureau further explained

<sup>1</sup> TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a person without such a disability. TRS is provided in a variety of ways. "Traditional" TRS is TTY text-based TRS. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket Nos. 90-571 & 98-67, CG Docket No. 03-123, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 12475, at 12477, para. 1 n.1, at 12480, para. 3 n.18 (June 30, 2004) (*2004 TRS Report & Order*).

<sup>2</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466, at 1467-1468, para. 4 (Jan. 26, 2005) (*Financial Incentives Declaratory Ruling*).

<sup>3</sup> *Id.*

that because the Interstate TRS Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make. The Bureau therefore concluded that, effective March 1, 2005, any TRS provider offering such incentives for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund.<sup>4</sup>

3. The *Financial Incentives Declaratory Ruling* was in response to a TRS provider's customer loyalty program, which offered the provider's customers the opportunity to have their DSL or cable modem bill reimbursed by the provider through the accumulation of points based on minutes of use of the provider's TRS service.<sup>5</sup> Sprint Corporation (Sprint) seeks clarification whether its free long distance service promotion violates the prohibition against TRS financial incentives set forth in the *Financial Incentives Declaratory Ruling*.<sup>6</sup>

4. As Sprint explains, it provides traditional TRS in a state (California) that has more than one provider of this service (i.e., a "multi-vendor" state).<sup>7</sup> Therefore, a TRS consumer in that state can choose which available TRS provider he or she wants to handle his or her TRS call. To give the consumers an incentive to use Sprint's relay service, Sprint adopted a promotion whereby long distance calls would be free to consumers who select Sprint as their provider of both relay and long distance services.<sup>8</sup> Sprint asserts that its free long distance program is distinguishable from the kind of financial incentive programs prohibited by the *Financial Incentives Declaratory Ruling*, and therefore should be permissible.<sup>9</sup> Sprint asserts that, unlike customer loyalty programs, the free long distance program does not provide any benefits independent of the calls themselves, and therefore there is no incentive to make "unnecessary TRS calls."<sup>10</sup> Sprint also notes that discounts from standard rates have long been characteristic of the "super-competitive long distance market."<sup>11</sup> Finally, Sprint notes that even if we find that its free long distance program violates the *Financial Incentives Declaratory Ruling*, we should make clear that the Commission's prohibition applies only to interstate long distance service, and not intrastate long distance service.<sup>12</sup>

<sup>4</sup> *Id.*, 20 FCC Rcd at 1469-1470, para. 9.

<sup>5</sup> *Id.*, 20 FCC Rcd at 1467, para. 2.

<sup>6</sup> Letter from Sprint to Thomas E. Chandler, Chief, Disabilit[y] Rights Office, Consumer and Governmental Affairs, Federal Communications Commission, dated February 7, 2005, regarding *Declaratory Ruling* (DA 05-140) issued January 26, 2005 in CC Docket No. 98-67 & CG Docket No. 03-123 (*Ex Parte Communication*) (*Sprint Letter*).

<sup>7</sup> *Sprint Letter* at 1-2.

<sup>8</sup> *Sprint Letter* at 1. Providers of traditional TRS may not charge consumers for the cost of the TRS service; they may, however, charge the consumer for long distance service. The Commission's rules require providers of traditional TRS to offer their consumers access to the consumer's long distance carrier of choice. See 47 C.F.R. § 64.604(b)(3). In other words, TRS consumers must be afforded the same opportunity given to non-TRS consumers to use whichever long distance service they choose when making a long distance call. See generally *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Second Report and Order, Order on Reconsideration, and Notice of Proposed Rulemaking, 18 FCC Rcd 12375, at 12412-12415, paras. 54-61 (June 17, 2003). We note that the carrier of choice rule is presently waived for the provision of IP Relay and VRS. See, e.g., *2004 TRS Report & Order*, 19 FCC Rcd at 12594, Appendix E.

<sup>9</sup> *Sprint Letter* at 2-3.

<sup>10</sup> *Sprint Letter* at 2-3.

<sup>11</sup> *Sprint Letter* at 2.

<sup>12</sup> *Sprint Letter* at 2 n.1. We note that on March 11, 2005, Nordia, Inc., another provider of traditional TRS in California, addressed by letter the provision of free long distance service along with traditional TRS service. See (continued....)

### III. DISCUSSION

5. We find that offering free or discount long distance service (subject to the exceptions noted below) to TRS consumers as an incentive to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls, constitutes an impermissible financial incentive in violation of the *Financial Incentives Declaratory Ruling*.<sup>13</sup> When customers receive either free or heavily discounted long distance service, they have an incentive to make more or longer calls than they would make in the absence of such a program. Consequently, the Interstate TRS Fund, which compensates providers on a per-minute basis, is billed for minutes the customers might not have generated but for the incentive program.<sup>14</sup> This order shall be effective 120 days after publication in the Federal Register.<sup>15</sup>

6. There are, however, two important limitations to our conclusion with respect to free or discount long distance service to TRS consumers. First, the *Financial Incentives Declaratory Ruling* and this *Order* apply only with respect to free or discount *interstate* long distance service, not *intrastate* long distance service.<sup>16</sup> Second, we recognize that providers have long offered discount long distance service to TRS consumers who use a TTY under the rationale that, given the nature of traditional TRS, it takes substantially longer for parties to a traditional TRS call to have a conversation than it would for two hearing parties to have the same conversation.<sup>17</sup> Therefore, providers are permitted to offer discount long distance service to TRS consumers so long as the discounts reasonably relate, under the functional equivalency principle, to equalizing the cost of the call based on the added length of a TRS call. We prohibit only those long distance discounts for TRS consumers that go beyond ensuring that the long distance service cost of the TRS call is equivalent to what that cost would have been for hearing parties. Programs directed at giving the consumer an incentive to make a TRS call in the first place, or to place a

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Letter from Vinson & Elkins (Counsel for Nordia, Inc.) to Thomas E. Chandler, Chief, Disabilit[y] Rights Office, Consumer and Governmental Affairs, Federal Communications Commission, dated March 11, 2005, regarding Declaratory Ruling Regarding Hands-On Video Relay Services, Inc., CC Docket No. 98-67 and CG Docket No. 03-123.

<sup>13</sup> See *Financial Incentives Declaratory Ruling*, 20 FCC Rcd at 1469-1470, para. 9.

<sup>14</sup> Although Sprint raises this issue in the context of a multi-vendor state, we note that our conclusion applies to TRS providers whether or not they are the only provider in a state. Free or discount long distance programs for traditional TRS consumers run afoul of the Commission's financial incentives prohibition not because they might cause a consumer to select one provider's service instead of another provider's service, but because such programs may have the effect of causing a TRS consumer to make more or longer TRS calls than he or she would otherwise make.

<sup>15</sup> The record reflects that some providers may not be able to immediately change their automated billing system. See Letter from MCI to Marlene H. Dortch, Secretary, Federal Communications Commission, dated June 10, 2005, regarding CC Docket No. 98-67 and CG Docket No. 03-123 (indicating that MCI would need 45 days to comply with ruling proscribing free long distance); Letter from Vinson & Elkins (Counsel for Nordia, Inc.) to Thomas E. Chandler, Chief, Disabilit[y] Rights Office, Consumer and Governmental Affairs, Federal Communications Commission, dated June 16, 2005, regarding Nordia Billing for Interstate Calls (indicating company would require 9 to 12 months to implement billing system). We believe that 120 days is a reasonable time for providers to come into compliance.

<sup>16</sup> Therefore, providers may offer free or discounted *intrastate* long distance service to TRS consumers consistent with the requirements of the state in which they are offering service.

<sup>17</sup> For example, with traditional TRS the parties to the call must take turns communicating via the communications assistant (CA), who relays the conversation back and forth between the parties.

longer TRS call than the consumer might otherwise make, are prohibited under this *Order*.<sup>18</sup>

#### IV. CONCLUSION

7. Pursuant to the *Financial Incentives Declaratory Ruling*, TRS providers offering to TRS consumers free or discount long distance service, as set forth above, as an incentive to use a particular TRS provider's relay service, or as an incentive for a consumer to make more or longer TRS calls, will be ineligible for compensation from the Interstate TRS Fund. This *Order* shall be effective 120 days after publication in the Federal Register.

#### V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. § 225, and sections 0.141, 0.361, and 1.3 of the Commission Rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, this *Order* is hereby ADOPTED.

9. IT IS FURTHER ORDERED that any TRS provider offering to TRS consumers financial incentives relating to free or discount long distance service, as set forth above, SHALL BE ineligible for compensation from the Interstate TRS Fund.

10. IT IS FURTHER ORDERED that this *Order* SHALL BE effective 120 days after publication in the Federal Register.

11. To request materials in accessible formats (such as braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Declaratory Ruling* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

#### FEDERAL COMMUNICATIONS COMMISSION

Monica Desai, Acting Chief  
Consumer & Governmental Affairs Bureau

<sup>18</sup> Nothing in the *Financial Incentives Declaratory Ruling* or this *Order* precludes interstate TRS providers that also offer long distance service from offering discounts to all of their consumers when the same discount applies to both voice and TRS calls. We address herein only the situation where TRS consumers, but not other consumers, are given free long distance service (or discount long distance service) as incentive for the consumer to use the particular TRS provider that also offers the long distance service, or to make more or longer TRS calls.